

P.R. No. 5348/05
 Presented by Virek Pathore
 dated 17/10/05

(6)
 (1)

IN THE HIGH COURT OF JUDICATUE OF CHHATTSGARH
AT BILASPUR
W.P.No. 5196/2005

PETITIONERS :-

- 1) Shiv Kumar Singhania
 S/o Jamuna lal Singhania
 Aged about 48 Years, (Plot No. 471)
- 2) Arun Kumar jain S/o Kailash
 Chand jain Aged about 36
 years
 (Plot No. 465-A)
- 3) Purshottam Singhania S/o
 Jamuna lal Singhania Aged
 about 41 years,
 (Plot No. 465-B)

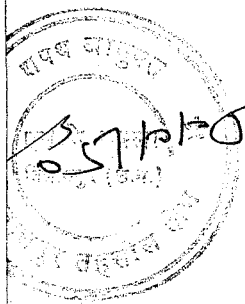
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All the Petitioners are resident of
 Samta Colony, Raipur Distt- Raipur
 (C.G.)

VERSUS

RESPONDENTS :

- 1) State of C.G.
 Through: Secretary,
 Department of Urban Development,
 Mantralya D.K.S. Bhawan, Raipur
 (C.G.)
- 2) Municipal Corporation,
 Through : Commissioner,
 Municipal Corporation, Raipur
 (C.G.)
- 3) Joint Director
 Town & Country Planning
 Department,
 Raipur (C.G.)
- 4) Samta Co-operative Housing
 Society,
 Through : Its President,
 Samta Colony - Raipur (C.G.)
- 5) Chhaparu Panchayat Trust
 Through : Its President
 Shri Hohan lal Kesarwani
 Naharpara,
 Bhagwati Matadoor, Transport,
 Raipur (C.G.)



WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA FOR THE ISSUANCE OF APPROPRIATE
WRIT(S) OR ORDER (S) OR DIRECTIONS(S) ETC.

The petitioners most respectfully state as under :

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>04.10.2006</u> Shri Y.C. Sharma, counsel for the petitioners. Shri Sushil Dubey, Govt. Advocate for the State/ respondents No. 1 & 3. Shri H.B. Agrawal, Sr. Advocate with Shri Pankaj Agrawal, counsel for respondent No.2. Shri Raja Sharma, counsel for respondent No. 4. Shri Sunil Otواني, counsel for respondent No.5. Arguments heard. Order dictated as follows: <u>Oral Order</u> (04.10.2006) By way of this writ petition filed under Article 226/227 of the Constitution of India, the petitioners, who are residents of Samta Colony, Raipur, have prayed for issuance of a writ against the respondents, particularly against respondent No.5 that they shall not make any commercial-cum- marriage hall on the site of plots No. 472 & 473 (wrongly mentioned as 272 & 273 in the relief clause). It has further been prayed that the building, so constructed, should not be used for any commercial purpose because the same is not being meant for the said purpose. The brief facts are that these petitioners are residing in different houses, situated in Samta Colony, Raipur. Respondent No.5 has also got some piece of land in the same Colony and they	

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	have raised certain construction over the same. It is stated that alongwith the residential premises, a community centre and a temple etc. has also been constructed by respondent No.5. The petitioners have taken this ground that respondent No.5 is constructing a building for commercial purpose as commercial-cum-marriage hall, which is contrary to the lay-out of master plan of scheme No.9 and is against the rule of Housing Society and against the interest of the people residing nearby. The petitioners have filed this petition, apprehending that if the building constructed on the plots in possession of respondent No.5 is allowed to be used for commercial purpose, it will create a nuisance in the residential area of the society and the same should be prohibited by issuing the above prayed directions by this Court. After issuance of the notice, respondent No.5 has caused its appearance and it has also filed its separate return. It has been contended vide para 2 of the return that the said respondent has not constructed any commercial-cum-marriage hall on any portion of the aforesaid land. On the contrary, the said respondent has constructed a residential-cum-community centre for the purpose of promoting socio-religious activities. Further, in para 5 of the return, it has very specifically been mentioned that the permission, which has been granted by respondent No.2 vide Annexure R-1, clearly demonstrates that it has been granted to make construction for residential purpose. Respondent No.5 had made the statement that the "aforesaid premises would be used	

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	for the socio-religious activity and the same would not be used for commercial purpose". Referring to these paragraphs of the return, learned counsel appearing on behalf of respondent No.5 submits that since the undertaking in the form of above statement is given in the return of respondent No.5, the grievance raised by the petitioners and the relief claimed vide relief clause No. 7.1 and 7.2, are satisfied. Learned counsel for respondent No.5 also takes me to the document Annexure R-1, which is a sanction order, in which vide para 14, it has been mentioned that "उक्त निर्माण आवासीय रहेगा । किसी भी दशा मे भू उपयोग परिवर्तन न करें परिवर्तन करने पर नियमानुसार विधिवत कार्यवाही की जावेगी । जिसकी संपूर्ण जवाबदारी संस्था की स्वयं की होगी ।" He also takes me to the site plan, filed as Annexure R-2, in which it has further been mentioned that the sanction has been granted for the proposed residential complex. This all has been shown to me to convince that in any manner, there is no violation of any condition of sanction and the respondent No.5 never intended to use any portion of the premises for any commercial purpose.	

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	In view of the above undertaking given by respondent No.5 in para 5 of the return and looking to the relief(s) claimed in the petition, there is no necessity of prosecuting this petition any more and the same can be disposed of on the above undertaking itself. In view of the above, this petition is finally disposed of at this stage with the observation that respondent No.5 will act in accordance with the conditions of the sanction by which it has been granted permission by the Corporation and it will also be abide by the undertaking given by it before this Court. This petition stands finally disposed of with the aforesaid observations.	Sd/- Sunil Kumar Sinha Judge

Vatti

P.T.O.

7.10.06
29/11/06
5/12/06